

February 26, 1997

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND DECISION ON AN APPEAL FROM NOTICE AND ORDER

SUBJECT: Department of Development and Environmental Services File No. **E9500239**

CHARLES MONACO
Code Enforcement Appeal

Location: 40328 - 212th Avenue Southeast
Enumclaw, Washington

Appellant: Charles Monaco
40328 - 212th Avenue Southeast
Enumclaw, WA 98022

SUMMARY:

Division's Preliminary: Deny the appeal
Division's Final: Deny the appeal
Examiner: Grant the appeal

PRELIMINARY MATTERS:

Notice of appeal received by Examiner: January 13, 1997

EXAMINER PROCEEDINGS:

Hearing Opened: February 19, 1997
Hearing Closed: February 19, 1997

Participants at the proceedings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- mobile home
- building code

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On December 12, 1996, the Department of Development and Environmental Services, Building Services Division, Code Enforcement Section, (the "Department") issued a Notice and Order to Charles Monaco (the "Appellant") regarding alleged placement of a (second) mobile home on the subject property at 40328 - 212th Avenue Southeast, without required permits and inspection approvals. The Notice and Order required the Appellant to remove the mobile home from the premises not later than March 15, 1997 or pay a cumulating penalty of \$25.00 per day.
2. In challenging the Notice and Order, the Appellant raises two issues:
 - A. Appellant Monaco, observing that the mobile home at issue is not occupied and is not connected to any utilities or services, asks whether the subject Notice and Order may be served upon a property owner for merely **storing** a mobile home.
 - B. If issue A fails, then Appellant Monaco requests additional time to remove the mobile home. However, he is unable to estimate the amount of additional time desired or required. In the Appellant's judgement, the time required to remove the mobile home is based upon his ability to find a buyer and the prospective buyer's ability to find a site. The Appellant contends that there are two potential buyers presently looking for sites.
3. The following findings are relevant:
 - A. The mobile home is not occupied. An anonymous complainant states that it was occupied in October, 1996. However, a December inspection by a Department Code Enforcement officer did not confirm that allegation.
 - B. The Department and the Appellant agree that the mobile home at issue is approximately 8-feet-wide and approximately 50 to 60-feet-long.
 - C. The subject property is classified A35 (agriculture). It comprises 19.72 acres according to the Department; 19.90 acres according to the Appellant.
 - D. The Appellant obtained a permit from the State Department of Licensing to move the mobile home to the subject property. That permit has since expired.
 - E. The mobile home is not connected to any utilities or services. It is tied down, with stacked brick "foundation" support. These measures are necessary, the Appellant states, due to the high winds which cross the Enumclaw plateau.
 - F. The December 12, 1996 Notice and Order cites the Appellant for violation of King County Ordinance No. 12380, an ordinance which regulates the installation of mobile homes.

4. Except as noted above, the facts contained in the Building Services Division Preliminary Report dated February 11, 1997 are correct and are incorporated here by reference. A copy of the Building Services Division report will be attached to those copies of the Examiner's report which are submitted to the King County Council.
5. Any portion of any of the following conclusions which may be construed as a finding is incorporated here by reference.

CONCLUSIONS:

1. The Department has cited the Appellant for "installation of a mobile home" violation of Ordinance No. 12380; in particular, Ordinance No. 12380, Section 4A, a new section added to KCC 16.04. However, the Appellant argues that he has never "installed" the mobile home at issue and has never intended to install it. He only wants to "store" it for a while. The facts reviewed in finding no. 3, above, support the Appellant's intention. See, particularly, finding nos. 3A and 3E.
2. In the hearing, the Department, in response to Examiner's questions, reviewed the zoning code controls on mobile homes and recreational trailer homes in the residential and agricultural zones. However, Appellant Monaco has never been cited for zoning code violation. It may very well be true that the A classification prohibits the storage of unoccupied and unconnected ("not installed") mobile homes. If the Department had cited Appellant Monaco for a violation of such rules, then these conclusions would review the applicable zoning code controls further. That, however, is not the case. We are left to consider only the ordinance cited in the December 12, 1996 Notice and Order; that is, Ordinance No. 12380.
3. The subject mobile home does not violate Ordinance No. 12380, new Section 4, as argued by the Department. The Appellant has not "installed" the mobile home at issue. Nor is it occupied. For this reason, the appeal will be granted. Both the Department and the Appellant should understand, however, that the Decision below does not prohibit the Department from again serving the Appellant with a new Notice and Order which addresses the **zoning** (KCC Title 21A; **not** KCC Title 16) issue of whether is it legal to "store" a mobile home on "A35" classified property.

DECISION: The appeal is GRANTED. See, however, conclusion no. 3, above.

ORDERED this 26th day of February, 1997.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 26th day of February, 1997, by certified mail, to the following parties and interested person:

Charles Monaco
40328 - 212th Avenue Southeast
Enumclaw, WA 98022

TRANSMITTED this 26th day of February, 1997, to the following parties and interested persons:

Ken Dinsmore, DDES, Building Services Division, Code Enforcement Section
Elizabeth Deraitus, DDES, Building Services Division, Code Enforcement Section
Lamar Reed, DDES, Building Services Division, Code Enforcement Section

The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one days of issuance of the decision.

MINUTES of the public hearing of CHARLES MONACO - E9500239, February 19, 1997:
R.S. Titus was the Hearing Examiner for this matter. Participating in the hearing were Lamar Reed/Code Enforcement Section and Charles Monaco/Appellant.

The following exhibits were offered and entered into the record:

Exhibit No. 1	Situs 1 file information
Exhibit No. 2	Situs 2 file information
Exhibit No. 3	Department of Assessments real property characteristics
Exhibit No. 4	Department of Assessments real property tax information
Exhibit No. 5	Department of Assessments real property legal description
Exhibit No. 6	Map of subject property
Exhibit No. 7	Letter, dated October 3, 1996, to Charles Monaco
Exhibit No. 8	Notice and Order, dated December 12, 1996
Exhibit No. 9	Notice of Appeal, dated December 31, 1996, from Charles Monaco
Exhibit No. 10	Notice of Appeal envelope, post marked December 24, 1996
Exhibit No. 11	Request for hearing, dated January 14, 1997, with attached party of record list
Exhibit No. 12	Copy of pages 1, 4, and 17 of Ordinance No. 12380
Exhibit No. 13	Code Enforcement Section staff report to the King County Hearing Examiner, dated February 11, 1997
Exhibit No. 14	Photograph, taken by Department, of mobile home

RST:var

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